IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. NO. 1273 /2004

PETITIONER : Sundar Devi Aged about 72 years
PLAINTIFF Wd/o. Rambharos Chouhan
R/o. Chouhan Bada, Link Road,
Bilaspur, Tahsil & Distt. Bilaspur (C.G.)

VERSUS

RESPONDENTS : 1] Urmila Bai, Aged about 72 years
DEFENDANTS Wd/o. Chandrika Prasad Shukla,

2] Narayan Prasad Shukla
Aged about 60 years,
S/o. Late Chandrika Prasad Shukla

3] Bhagwati Prasad Shukla
Aged about 42 years,
S/o. Late Chandrika Prasad Shukla

All above R/o. Link Road, Near Bukhari Petrol Pump, Tahsil & Distt. Bilaspur (C.G.)

P. R. No. 1263/04
Presented by Shri M.V. Ramani adv
dated 05.05.04

शपथ आयुक्त
बिलासपुर तहसील क्षेत्र

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(98)

आदेश पत्रक

मामला क्रमांक W.P.1273/ **सन्** 2004

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	16-3-2005 On a mention being made, the matter is taken up for hearing. Mr. Manoj Parajpe, counsel for the petitioner. Mr. Shree Kumar Agrawal, Senior Advocate with Mr. Anand Kumar Gupta, Advocate for respondents No.2 and 3. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality, propriety and correctness of the order dated 16-4-2004 passed by the 3rd Civil Judge, Class-I, Bilaspur, in Civil Suit No.6-A/2002 in the case of Sundar Devi vs. Urmila Bai and others, whereby, the learned Civil Judge rejected the objection of the petitioner herein and ordered that even after striking out of the defence of defendant/ respondent No.2 herein, defendant No.2 is entitled to defend the case under the general law and in the affidavit of evidence which has been filed by defendant No.2, defendant No.2 has not raised any defence available to him under Section 12 of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as 'the Act'), therefore, the objection dated 21-2-2004 of the petitioner herein is rejected. Brief facts leading to filing of this writ petition are that the petitioner herein filed a suit for eviction against respondent No.1 in respect of the property mentioned in the plaint. However, during the pendency of the suit, respondent No.1 died, therefore, respondents No.2 & 3 were taken on record as legal heirs of respondent No.1. During the pendency of the suit, the petitioner herein moved an application under Section 13 (6) of the Act for striking out the defence of the respondents as they failed to deposit the arrears of rent and the rent during pendency of the suit in compliance of the provisions of Section 13 (1) of the Act. Ultimately, that application was allowed and defence of the respondents herein was struck out vide order	

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dated 27-1-2000, thereafter, the plaintiff adduced her evidence in order to prove her suit. However, when the turn of the defendants came for adducing their evidence and they failed to file evidence as per the provisions of Order 18 Rule 4 of the C.P.C. an objection was raised by the plaintiff/petitioner herein that the respondents are not entitled to take that defence as their defence has already been struck out. The stand of the respondents since beginning was that even though Chandrika Prasad Shukla, husband of respondent No.1 herein, was initially inducted as tenant of the petitioner in the disputed premises, however, later on, Chandrika Prasad Shukla purchased the disputed premises on 27-12-1966 by a registered sale deed in favour of Chandrika Prasad Shukla, husband of respondent No.1 herein and father of respondents No.2 & 3 herein, and from that date the tenancy stood terminated as the house in question was purchased by Chandrika Prasad Shukla. In order to prove that thereafter, the relationship of land lord and tenant between the petitioner and respondents came to an end, the respondents want to adduce evidence to that effect.

I have heard learned counsel for the parties.

Learned counsel for the petitioner argued that in the guise that the respondents are not tenants of the petitioner, the respondents are not entitled to convert the tenancy suit into title suit and the evidence in question which has been adduced by the respondents through the affidavit amounts to proving the title, therefore, the same is not permissible under the law. In the circumstances, the order impugned is not in conformity with the settled law on the point.

On the other hand, learned Senior Advocate submitted, it is true that defence of the respondents has been struck out, but since beginning the respondents have denied the relationship of land lord and tenant between

(पीछे देखिये)

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मामला क्रमांक W.P. 1273/ **सन्** 2004

..... **विरुद्ध** .....

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the petitioner and respondents as the house in question was purchased by the predecessor of the respondents in title by name Chandrika Prasad Shukla, and from that date the tenancy came to an end. Therefore, in order to prove that there is no relationship of land lord and tenant between the parties from the date of execution of sale deed i.e. 27-12-1996, the respondents are entitled to adduce evidence to that effect.

Having heard learned counsel for the parties, settled law on the point is that in the first instance, in order to obtain a decree of eviction against the tenant under the Act, the plaintiff is required to prove the privity of contract i.e. relationship of land lord and tenant. Further, in order to obtain the eviction decree, land lord is required to prove any of the grounds for eviction available to him under Section 12 of the Act. When defence is struck out under Section 13 (6) of the Act that means all the defence available to the tenant under Section 12 of the Act, are not available, and the tenant is not entitled to adduce evidence on this point. However, the defendant can cross examine the plaintiff and moreover he is also entitled to take defence which is available to him under the general law i.e. the defendant is entitled to adduce evidence to the effect that the relationship of land lord and tenant between the plaintiff and the defendant does not exist. In order to prove that fact he can adduce the evidence. Of course, some times it seems like that the land lord has tried to convert the tenancy suit into a title suit. But, in fact this is not the position in the present case. In order to establish that there is no relationship of landlord and tenant, the defendant has to adduce evidence as to how the landlord and tenant relationship does not exist between the two and tenancy, if at all was there between the two, how that came to an end. In the present case, the defence of the respondents is that on 27-12-1966, the predecessor in title of the respondents i.e. Chandrika Prasad Shukla

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..... विरुद्ध .....

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	purchased the house in question through a registered sale deed from the husband of the petitioner herein from whom he took the house on rent, and from that date the tenancy came to an end. Therefore, the respondents are entitled to adduce evidence to that effect and the objection of the petitioner herein is not sustainable at law. In conclusion, I am of the opinion that the objection raised by the petitioner herein before the trial Court has rightly been rejected by the trial Court. I do not find any illegality and infirmity in the order impugned. Therefore, the writ petition is liable to dismissed and it is accordingly, dismissed. Consequently, M.(W.)P.No.1141/2004 and I.A.No.5098/2004 stand disposed of. **Sd/-** **L.C. Bhadoo** **Judge**	

Soma

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